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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ANIBAL RODRIGUEZ, SAL CATALDO,
JULIAN SANTIAGO, and SUSAN LYNN
HARVEY, individually and on behalf of all other
similarly situated,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

Case No.: 3:20-cv-4688-RS

**PLAINTIFFS' OPPOSITION TO
GOOGLE'S MOTION *IN LIMINE* 13
(DKT. 589)**

Judge: Hon. Richard Seeborg

Trial Date: August 18, 2025

1 Presented as a motion *in limine* (Dkt. 589, the “Motion”), Google seeks to relitigate an issue
 2 this Court correctly decided nearly six months ago. Google’s expressed concerns about Plaintiffs
 3 seeking larger damages for the first time during closing leaving Google “in the dark” until then (Mot.
 4 at 5) are resolved by noting that the damages sought by Plaintiffs will be clear in Plaintiffs’ opening
 5 and throughout the trial. Indeed, it has been clear for a long time.

6 The Court ruled nearly six months ago that “Plaintiffs will not be foreclosed from urging the
 7 jury to draw inferences based on other evidence admitted at trial so as to award damages in excess
 8 of their expert’s conservative floor.” Dkt. 462 at 1. This was supported by Google’s own arguments
 9 in opposing the production of additional data and seeking to strike a portion of Mr. Lasinski’s
 10 supplemental expert report. *See* Dkt. 427 at 13:21–23 (Google acknowledging that “Plaintiffs can
 11 ask the jury to draw certain inferences using the information Google did produce”) & Dkt. 442 at
 12 11:17–20 (Google arguing that “Plaintiffs’ new opinion is not necessary to support their actual
 13 damages opinion” because “there are alternatives for the jury to reach the actual damages figure”).

14 The Court limited Mr. Lasinski’s testimony but appropriately left to the jury the ultimate
 15 determination regarding the amount of damages, where jurors could “endorse his opinion about a
 16 monthly measure being appropriate and reject his one-time payment theory” and “rely on other
 17 evidence in the case to estimate the number of months in which damages occurred and then multiply
 18 the estimated months number by \$3 per user or per device.” Dkt. 462 at 7.

19 Google’s Motion presents nothing new that would now justify reversing course and limiting
 20 Plaintiffs to Mr. Lasinski’s conservative floor. As the Court knows, reconsideration is an
 21 “extraordinary remedy” reserved for “highly unusual circumstances.” *California v. Connex TCT*
 22 *LLC*, 2024 WL 4584026, at *1 (N.D. Cal. Oct. 24, 2024) (Seeborg, C.J.). The only “new” material
 23 Google cites are certain demonstratives recently exchanged by the parties. These demonstratives
 24 comply with the Court’s order. Mr. Lasinski will not present any illustrative calculations for going
 25 above his conservative baseline—a point Google concedes. *See* Mot. at 1 (acknowledging that Mr.
 26 Lasinski’s demonstratives seek damages for “a single month”). In any event, the parties have not
 27 yet met and conferred about any demonstratives. To the extent disputes arise, the parties will address
 28

1 them in due course along with the other expert demonstratives.

2 There also is no basis for Google to claim “surprise.” Mot. at 5. As the Court wrote in
 3 February, “Google understood that actual damages in this case might be measured monthly,” and it
 4 is a “stretch to find Google surprised by the notion that Plaintiffs believe actual damages in this case
 5 could be computed on a monthly basis.” Dkt. 462 at 5. Google has had *since February* to recover
 6 from whatever “surprise” it claimed to have felt, and to prepare for a trial in which Plaintiffs ask the
 7 jury to compute damages “on a monthly basis.” *Id.*

8 Google’s cases are either inapplicable or distinguishable. Five of the seven cases Google
 9 relies on for this point excluded (or affirmed exclusion of) expert reports or expert testimony, not
 10 attorney argument or demonstratives. *See Yeti by Molly, Ltd. v. Deckers Outdoor Corp.*, 259 F.3d
 11 1101, 1105–08 (9th Cir. 2001); *Luke v. Family Care and Urgent Med. Clinics*, 323 F. App’x 496,
 12 498–99 (9th Cir. Mar. 30, 2009); *Asia Vital Components Co., Ltd. v. Asetek Danmark A/S*, 377 F.
 13 Supp. 3d 990, 1104–05 (N.D. Cal. 2019); *Rembrandt Vision Techs., L.P. v. Johnson & Johnson*
 14 *Vision Care, Inc.*, 725 F.3d 1377, 1381–83 (Fed. Cir. 2013); *Keener v. U.S.*, 181 F.R.D. 639, 641–
 15 42 (D. Mont. 1988). Because the Court already excluded these portions of Mr. Lasinski’s
 16 supplemental report and restricted his testimony, these cases do not apply here.

17 The other two cases Google cites are also distinguishable. In both, counsel raised entirely
 18 new damages theories. *See Apple, Inc. v. Samsung Elecs. Co., Ltd.*, 2023 WL 6073326, at *1–2
 19 (N.D. Cal. Nov. 17, 2013) (precluding closing argument on novel theory that users would not have
 20 purchased Samsung phones but for the allegedly infringing features in those phones); *see also Turner*
 21 *v. Thyssenkrupp Materials NA, Inc.*, 2020 WL 7123312, at *1 (precluding proceeding to trial on new
 22 theory that unpaid commissions resulted from a stock split). Here, Plaintiffs are not presenting a
 23 new damages theory. The \$3 monthly payment has always been in this case, as this Court found *six*
 24 *months ago*, *see* Dkt. 462 at 5 (“Google understood that actual damages in this case might be
 25 measured monthly”), and as this Court reaffirmed just days ago at the pretrial conference, *see* Mao
 26 Decl. Ex. A (Pretrial Conf. Tr.) at 54:24 (“It’s not new facts. It’s just an argument.”).

27 Google agrees that the jury may draw reasonable inferences based on the evidence and are

not constrained by expert calculations in awarding damages. Mot. at 5 (“[t]here is no dispute that a jury may award damages ... outside of any party’s damages models or calculations”); *accord Atlas Flooring, LLC v. Porcelainte S.A.*, 425 F. App’x 629, 633 (9th Cir. Apr. 4, 2011) (affirming jury verdict exceeding expert damages calculation because “the record contained other evidence providing a reasonable basis” for the award). “Reasonable jurors need not accept the views of one side’s expert or the other’s, but may make their own reasonable judgment on the evidence, accepting part, all, or none of any witness’s testimony.” *In re Exxon Valdez*, 270 F.3d 1215, 1248 (9th Cir. 2001) (affirming jury’s damages verdict that did not track any expert’s damages calculations).

Plaintiffs’ case-in-chief will include evidence from which the jury can reasonably draw the inferences necessary to support a damages number based on multiple months. That evidence will include, for example, Google-produced spreadsheets with information regarding the number of accounts where users had (s)WAA turned off in different months, testimony of the named Plaintiffs, testimony by Plaintiffs’ technical and survey experts, and other documents produced by Google. Google has cited no authority in the Federal Rules or caselaw for its extraordinary demand that this Court bar Plaintiffs from presenting their damages case to the jury.

Finally, the Court would also be within its discretion to deny Google’s Motion as untimely. The Court issued its prior ruling on February 21, 2025. *See* Dkt. 462. Motions *in limine* were due June 24, 2025, and Google could have raised these issues back in June. In addition, Google without explanation ignored the Court’s deadline for this Motion. The Court ordered Google to file this Motion by August 5, 2025. *See* Mao Decl. Ex. A at 121:7–122:15. Without notice to Plaintiffs or the Court, Google ignored that deadline. Google instead filed this Motion on August 8, forcing Plaintiffs to brief this issue during the final week before trial. That untimely filing without good cause also supports denial of this Motion. *See United States v. Wolf*, 691 F. App’x 438, 439 (9th Cir. May 24, 2017) (“[t]he district court did not abuse its discretion in dismissing [defendant’s] motion *in limine* as untimely. [Defendant] does not demonstrate good cause to justify his untimely filing.”); *Zaragoza v. Cnty. of Riverside*, 2024 WL 663235, at *7 (C.D. Cal. Jan. 18, 2024) (denying motions *in limine* filed the day after the due date as untimely).

1 Plaintiffs respectfully ask that the Court deny Google's Motion.

2
3 Dated: August 14, 2025

Respectfully submitted,

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